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OFFICE OF PETITIONS

In re Patent No. 7,672,998
Issued: March 2, 2010
Application No. 09/715,641
Filed: November 17, 2000
Attorney Docket No. ZIP00-01

: DECISION ON REQUEST
: FOR RECONSIDERATION
: OF PATENT TERM ADJUSTMENT
: AND
: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

This is a decision on the "REQUEST FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705 AND 37 C.F.R. §1.703" filed May 3, 2010, requesting that the patent term adjustment determination for the above-identified patent be changed from 1295 days to 1546 days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand two hundred fifty-three (1253) days is **GRANTED to the extent indicated herein**.

Patentee has miscalculated the total patent term adjustment as patentee's calculation fails to take into account that a Notice of Appeal was filed February 6, 2007. The period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii). In this instance, the period is 326 days, beginning on July 25, 2005 and ending on June 16, 2006. The Office has also determined that the period of overlap is 108 days. Thus, B delay is 507 days. The 657 days accorded at issuance was for B delay. The 657 days is being removed and corrected to 507 days.

Additionally, the calculation provided by Applicant fails to account for 100 days delay for the period December 11, 2007 to March 20, 2008 pursuant to 37 CFR 1.704(b) and also for the 95 day examination delay pursuant to 37 CFR 1.704(a)(1) for the period January 30, 2006 to May 5, 2006, and neither does applicant provide a basis for the failure to account for those periods of delay.

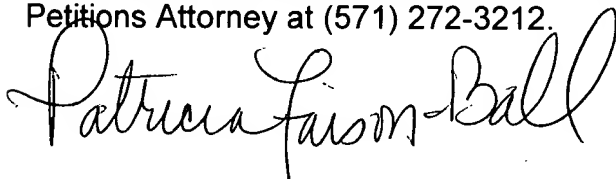
As such, the patent term adjustment is 1253 (931 "A delay" days, plus 615 "B delay" days, minus 108 overlap days, minus 185 applicant delay days) not 1546.

The Office acknowledges the authorization to charge the \$200.00 fee set forth in 37 CFR 1.18(e) to the credit card provided.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand two hundred fifty-two (1253) days**.

Telephone inquiries specific to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.

A handwritten signature in cursive script, reading "Patricia Faison-Ball". The signature is written in black ink and is positioned above the printed name and title of the signatory.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,672,998 B1

DATED : March 2, 2010

INVENTOR(S) : Robert D. Haskins

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (1295) days

Delete the phrase "by 1295 days" and insert – by 1253 days--